R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13030 OF 2023

Central Board of Trustees Employees Provident Fund Organization .. Petitioner

Versus

Pahwa and Pahwa Press Ltd .. Respondent

....

- Mr. Varun R. Joshi for Petitioner

....

CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 04, 2023

P.C.:

1. Heard Mr. Joshi, learned Advocate for Petitioner.

2. This Petition is filed under Articles 226 and 227 of the Constitution of India to challenge the order dated 22.07.2022 passed by the Central Government Industrial Tribunal No. 1, Mumbai (CGIT-1) in EPFA-80/2017.

3. The Petitioner is the Central Board of Trustees constitued under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short "**the said Act**").

4. Appeal 80 of 2017 was filed by the Respondent Company to challenge the order dated 11.11.2016 passed by the Competent Authority under Section 14-B and Section 7-Q of the said Act levying an amount of Rs. 67,383/- as damages and Rs. 34,459/- as interest on the Respondent Company in respect of delayed payment of contribution during the period 01.04.2013 to 30.09.2013.

5. Mr. Joshi, learned Advocate for Petitioner would submit that the impugned order dated 22.07.2022 suffers from complete non application of mind and is not supported by sufficient reasons. He would submit that though Respondent Company was allotted the code under Section 2-A of the said Act and not under Section 1(4) as applied for by the Company, it was the duty of the Petitioner to have approached the Petitioner and pleaded the true and correct facts. He would submit that before the allotment of the code to the Respondent Company, the Enforcement Officer had specifically visited the Respondent establishment and informed the Director concerned that seeking grant of code under Section 1(4) of the said Act is a complicated and time consuming process since the Director of the Respondent Company Mr. Rajib Pahwa was also a director of another establishment called Pioneer Book Company Pvt Ltd which was having a separate code. He would submit that despite the above caution, Respondent did not adhere to the advice given by the Enforcement Officer and waited for allocation of the code until 02.08.2013 thereby defaulting on payment of contribution on the due dates for the period between 01.4.2013 to 30.09.2013. He would submit that therefore the original order of the Competent Authority dated 11.11.2016 was correctly passed in the facts of the present case. In that context he would submit that the impugned order dated 22.07.2022 does not appreciate the aforementioned reasons and is therefore required to be quashed and set aside.

6. I have perused the original order dated 11.11.2016 which is at Exhibit-C page Nos. 47-48 of the Writ Petition and the impugned order passed by the CGIT-1 dated 22.07.2022 which is at Exhibit-B, page Nos. 32-46 of the Petition.

7. At the outset, it is seen that there is no dispute about the facts. Respondent establishment applied for a separate code which was granted to the establishment by the EPFO after 15 months. It is seen that since October 1997, Respondent establishment is in the business of advertising and is duly registered under the Companies Act and at no point of time the employees' strength of the Respondent establishment was more than 10. It is further seen that in order to ensure safeguarding of the interest of the workers employed by the Respondent establishment, on 01.04.2012 Respondent establishment applied for voluntary coverage under the said Act and applied for a code in terms of Section 1(4) of the said Act. It is further seen that EPFO allotted the Code to the Respondent Establishment on 02.08.2013 under Section 2(A) of the said Act and not under Section 1(4) as applied for.

8. Record reveals that after the initial application made by the Respondent establishment for coverage under Section 1(4) of the said Act, the Enforcement Officer visited the Respondent establishment and verified the records and was rendered complete co-operation. The visit note of the Enforcement Officer is placed on record. It is seen that due to allocation of the Code under Section 2A on 02.08.2013, there was delay in payment of contribution for the period 01.04.2013 to 30.09.2013. In view of that delay, inquiry was conducted and by the original order dated 11.11.2016 in exercise of powers under section 14B, damages and interest was levied on the Respondent establishment to the tune of Rs. 67,383/- and Rs. 34,459/- respectively. However the original order dated 11.11.2016 when read merely states that due to belated remittance of the statutory dues for the period April 2013 to September 2013, the damages and interest was levied. The order dated 11.11.2016 *prima facie* is a non speaking order and all that it states is that the concerned Competent Authority has carefully gone through all available records and applied its mind to all relevant facts and does not find merit in the submissions of the Respondent establishment and therefore imposed damages and interest under Section 14-B and 7-Q of the said Act. Such an unreasoned order on the faceof record is unsustainable in law.

9. When this order is challenged by the Respondent establishment before the CGIT, CGIT has rendered cogent and reasoned findings for setting aside of the original order. The CGIT has held that though there was delayed remittance for the period between 01.04.2013 to 30.09.2013, the said delay was not on account of any ulterior motive or intention but it was due to the delay caused in allotment of the code number to the Respondent establishment. The CGIT has also considered the fact that during that time Respondent establishment had already applied for voluntary coverage on the basis of its balance sheet and the number of workers employed by the Respondent. In that view of the matter, delay in remittance cannot be attributable to neglect and dereliction on the part of Respondent.

10. The abovementioned reasons have been taken into account by the CGIT while passing the impugned order. It is held by the CGIT that the original order is not a speaking order as there is no discussion about *mens rea* and as to why the maximum amount of damages should be imposed in such a mechanical manner. The CGIT has held that the original order is not based on good reasoning nor there is any finding on *mens rea* of the Respondent establishment for the alleged delay in remittance. It is also held by the CGIT that assessment of damages and interest has been made for the pre-discovery period.

11. In the facts and circumstances of the present case, it is clearly seen that the Respondent establishment was allotted the necessary code on 02.08.2013 and thus the delay cannot be made attributable to the neglect of the Respondent establishment. It is further seen that the Respondent establishment had also cooperated at all times with the statutory authority and despite the Respondent establishment providing all documents, code was not allotted to the Respondent within three working days as per the norms and rules of prevailing practice. Learned CGIT has returned a cogent finding that in the facts and circumstances of the present case, the delay is attributable to the Department i.e. Office of the Assistant Provident Fund Commissioner, Bandra. I see no reason as to why the said finding should be disturbed in view of the above observations and findings. Considering the facts and circumstances of the present case, the original order dated 11.11.2016 undoubtedly is not sustainable and therefore deserves to be quashed and set aside. The reasons and findings returned by the learned CGIT in the order dated 22.07.2022 therefore deserve to be upheld. The most crucial element of not having considered the mitigating circumstances has been adequately considered by the learned CGIT while passing the order dated 22.07.2022. The order dated 22.07.2022 is confirmed and upheld in its entirety.

12. As a consequence, Writ Petition fails. Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

Amberkar

RAVINDRA MOHAN AMBERKAR

Digitally signed by RAVINDRA MOHAN AMBERKAR Date: 2023.12.26 14:43:17 +0530